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FREE SPEECH AND THE INJUNCTION ORDER

BY SAMUEL GOMPERS,

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It is upon the labor movement that the toilers and the lovers of human freedom have set their hearts and hopes. They realize that the trade union movement of America is the historically developed potential force which bears the brunt and scars of battle and which makes sacrifices for right and justice for all, for all time. There is not a wrong against which we fail to protest or seek to remedy; there is not a right to which any of our fellows are entitled which it is not our duty, mission, and work and struggle to attain. So long as there shall remain a wrong unrighted or a right denied, there will be ample work for the labor movement to do. The struggle through the ages has always been attended with brutal tyranny and cruel injustice. Some have always had to suffer that the people might obtain some modicum of freedom. The times in which we now live are no exception to that rule. They who are true to their fellows, true to themselves, cannot and dare not evade the duties and responsibilities which may come from their advocacy of the cause of the people.

Tyranny, exercised by no matter whom or from what source, must be resisted at all hazards. The labor movement which is the defender, protector, and promoter of the rights and interests of the people, must be carried forward, its rapacious, ignorant opponents to the contrary notwithstanding. We should not, and we must not, surrender the rights which we have achieved for the toilers; we dare not permit the workers to become the victims of the tender mercies of their exploiters.

The higher manhood, womanhood, and childhood, a better standard of life which we have achieved for America's toilers, the better concept of human rights and liberties which have been secured at such great sacrifices are too precious heritages even to permit them to become debatable topics. They are the result of conquests in the struggle; they are ours to maintain and perpetuate for unborn generations.

It is a great struggle, it is the struggle of the ages, a struggle

of the men of labor to throw off some of the burdens which have been heaped upon them, to abolish some of the wrongs which they have too long borne and to secure some of the rights too long denied. If men must suffer because they dare speak for the masses of our country, if men must suffer because they have raised their voices to meet the bitter antagonism of sordid greed, which would even grind the children into the dust to coin dollars, and meeting with the same bitter antagonism that we do in every effort we make before the courts, before the legislatures of our states, or before the Congress of our country, if men must urge this gradual rational development then they must bear the consequences.

In all the history of the American Federation of Labor no greater struggle has taken place than that for the preservation and the maintenance of the right of free press and free speech. This arose under the injunction proceedings in the case of the Buck's Stove and Range Company against the American Federation of Labor in December, 1907. The technicalities of the case were soon lost sight of in the battle to preserve the great principles of human liberty which were involved.

The injunction proceedings of the Buck's Stove and Range Company, of St. Louis, Mo., of which James W. Van Cleave was president, against the American Federation of Labor, resolved themselves into two separate cases; one, the original injunction issued by Justice Gould, of the Supreme Court of the District of Columbia; the other, the proceedings for contempt brought against Vice-President John Mitchell, Secretary Frank Morrison, and myself. An appeal was taken by the American Federation of Labor on both cases. For convenience and an intelligent understanding, a brief summary of the case is here given.

Owing to the refusal of the Buck's Stove and Range Company, of St. Louis, to continue the nine-hour workday to the metal polishers in its employ and its discrimination against and discharge of employees because of their membership in the union, and despite efforts to harmonize and adjust the differences existing, the labor organizations in interest of St. Louis placed the product of the Buck's Stove and Range Company upon their "We Don't Patronize" list. Application was made to the American Federation of Labor at our Minneapolis convention, 1906, to endorse the action of the workers particularly interested and place the name of the company

upon the "We Don't Patronize" list of the American Federation of Labor.

The matter was referred by the convention to the executive council for the purpose of investigation and, if possible, adjustment. The executive council entrusted the matter to Vice-President Valentine to use his best efforts in the direction indicated. At a subsequent meeting of the executive council Vice-President Valentine reported that he had gone to the limit of his opportunities, and definitely ascertained that any effort on his part or on the part of anyone else to confer with Mr. Van Cleave upon the subject would be utterly fruitless, and though some of the then employees of the Buck's Stove and Range Company, who might be affected, were members of the Iron Molders' Union of North America, of which Mr. Valentine is president, he could not conscientiously interpose any objection to the attitude of the workers and organizations aggrieved or to the full endorsement of the application of our fellow-workers to place the Buck's Stove and Range Company upon the "We Don't Patronize" list of the American Federation of Labor. Thereupon, the executive council unanimously voted to approve the application.

On December 18, 1907, Mr. Van Cleave, president of the Buck's Stove and Range Company, of St. Louis, obtained from Justice Gould, of the District of Columbia, an injunction against the American Federation of Labor, the members of the executive council, both officially and individually, the officers and members of local and international unions affiliated to the American Federation of Labor, its agents, friends, sympathizers, or counsel, forbidding them in any way to publish, print, write, verbally or orally communicate the fact that the Buck's Stove and Range Company was unfair to or had any dispute with organized labor, or that it was "boycotted" by organized labor. The injunction prohibited the publication of the company's name upon the "We Don't Patronize" list of the American Federation of Labor, directly or indirectly, and all were forbidden to state, declare, or say that there existed or had been any dispute or difference of any kind between the company, the American Federation of Labor or any of its affiliated organizations in any manner whatsoever.

Hearing was had before the temporary injunction was issued by Justice Gould. He declined later to modify it or to explain its

terms. On December 18th the court issued the temporary injunction, it becoming effective December 23d, when the Buck's Stove and Range Company filed its bond, approved by the court. The temporary injunction was made permanent March 26, 1908, by Justice Clabaugh, of the same court. It read as follows:

ORDER GRANTING INJUNCTION PENDENTE LITE

This cause coming on to be heard upon the petition of the complainant for an injunction pendente lite as prayed in the bill, and the defendants' return to the rule to show cause issued upon the said petition, having been argued by the solicitors for the respective parties, and duly considered, it is thereupon by the court, this 18th day of December, A. D. 1907, ordered that the defendants, The American Federation of Labor, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper and Edward L. Hickman, their and each of their agents, servants, attorneys, confederates, and any and all persons acting in aid of or in conjunction with them or any of them be, and they hereby are, restrained and enjoined until the final decree in said cause from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business by defendants, or by any other person, firm or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm or corporation engaged in handling or selling the said product, and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing, or distributing through the mails, or in any other manner any copies of the "American Federationist," or any other printed or written newspaper, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the "We Don't Patronize," or the "Unfair" list of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them or which contains any reference to the complainant, its business or product in connection with the term "Unfair" or with the "We Don't Patronize" list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement, or notice, of any kind or character whatsoever, calling attention of the complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be "Unfair" or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or any repre-

sensation or statement of like effect or import, for the purpose of, or tending to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant, and from threatening or intimidating any person or persons whomsoever from buying, selling, or otherwise dealing in the complainant's product, either directly, or through orders, directions or suggestions to committees, associations, officers, agents or others, for the performance of any such acts or threats as hereinabove specified, and from in any manner whatsoever impeding, obstructing, interfering with or restraining the complainant's business, trade or commerce, whether in the State of Missouri, or in other states and territories of the United States, or elsewhere wheresoever, and from soliciting, directing, aiding, assisting or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid.

And it is further ordered by the court that this order shall be in full force, obligatory and binding upon the said defendants, and each of them, and their said officers, members, agents, servants, attorneys, confederates, and all persons acting in aid of or conjunction with them, upon the service of a copy thereof upon them or their solicitors or solicitor of record in this cause; *Provided*, The complainant shall first execute and file in this cause, with a surety or sureties to be approved by the court or one of the justices thereof, an undertaking to make good to the defendants all damage by them suffered or sustained by reason of wrongfully and inequitably suing out this injunction, and stipulating that the damages may be ascertained in such manner as the justice of this court shall direct, and that, on dissolving the injunction, he may give judgment thereon against the principal and sureties for said damages in the decree itself dissolving the injunction.

(Signed) ASHLEY M. GOULD,
Justice.

Upon the authority of the Norfolk Convention of the American Federation of Labor an appeal from the injunction was taken to the Court of Appeals of the District of Columbia, our main contention being that the terms of the injunction were in violation of fundamental constitutional rights and guarantees, and that it was, therefore, invalid and void. While this appeal was pending before the court Mr. Van Cleave petitioned the court which issued the injunction to adjudge Vice-President John Mitchell, Secretary Morrison and myself guilty of contempt of court and to require us to show cause why we should not be punished therefor.

The court heard argument of counsel on both sides as to whether the defendants, Mitchell, Morrison, and I, were guilty of contempt of court. While the appeal on the original injunction was

pending, Justice Wright, on December 23, 1908, adjudged us guilty of contempt of court and imposed a sentence of six months, nine months, and one year's imprisonment respectively upon "Morrison, Mitchell, and Gompers."

What are the offenses for which Mitchell, Morrison and I are sentenced to long terms of imprisonment, and the ignominy of being classified as criminals? We have dared to defend our constitutional rights as men and as citizens, despite the injunction of a court which sought to invade the rights of free speech and free press secured to the Anglo-Saxon people centuries ago by Magna Charta and clinched by the adoption of the first amendment to the Constitution of the United States. What, after all, are the grounds upon which Justice Wright held the defendants guilty of violation of the terms of the injunction? When the injunction was issued and went into effect, both temporary and permanent, we proposed to test the principles involved before the established legal tribunals. By instruction of and with authority from the executive council the name of the Buck's Stove and Range Company was removed from the "We Don't Patronize" list in the "American Federationist."

Vice-President Mitchell, it was alleged, violated the injunction by allowing certain acts to be performed by the officers of the American Federation of Labor, and also, that while presiding at a convention of the United Mine Workers of America, a resolution, regularly introduced by a delegate, calling upon the members of that organization not to bestow their patronage upon the product of the Buck's Stove and Range Company was submitted by Mr. Mitchell to the delegates for a vote. Secretary Morrison was charged substantially with having violated the terms of the injunction in so far as that he sent, or caused to be sent out copies of the printed official proceedings of the previous convention of the American Federation of Labor containing officers' and committee reports and resolutions of the convention relative to the Buck's Stove and Range Company's injunction and copies of the "American Federationist" containing similar references, circulars, appeals for funds, and editorials written by me on the injunction abuse.

The allegations charging me with violating the terms of the injunction were that I did, or authorized, or directed to be done, these things; because, by authority of the convention and of the executive council I sent to our fellow-workers and friends an

appeal for funds in order that we might be in a position to defend ourselves before the courts in the very injunction case involved; because in lectures and on the public platform, during the Presidential campaign I made addresses to the people giving reasons for the vote as a citizen I was to cast at the then pending Presidential election, and because I dared editorially to discuss the fundamental principles involved, not only in the injunction pending but the entire abuse of the injunction writ. Aye, because I published in the "*American Federationist*" the order of the court to show cause why we should not be punished, for contempt of the injunction was made part of the testimony upon which Justice Wright deemed it important to hold me guilty.

Immediately after Justice Wright declared us guilty of contempt of the injunction and imposed the sentences, notice of appeal was given and bonds furnished.

On March 11, 1909—that is, nearly four months after Justice Wright imposed these sentences for alleged contempt of the injunction—the Court of Appeals of the District of Columbia handed down its decision upon our appeal in the original injunction. That court greatly modified the terms of the injunction, holding that no publication could be forbidden except in furtherance of a "conspiracy" to boycott. The injunction as modified and affirmed by the court is as follows:

It is adjudged, ordered and decreed that the defendants, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham, Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper and Edward L. Hickman, individually and as representatives of the American Federation of Labor, their and each of their agents, servants and confederates, be, and they hereby are, perpetually restrained and enjoined from conspiring or combining to boycott the business or product of complainant, and from threatening or declaring any boycott against said business or product, and from abetting, aiding or assisting in any such boycott, and from directly or indirectly threatening, coercing or intimidating any person or persons whomsoever from buying, selling or otherwise dealing in complainant's product, and from printing the complainant, its business or product in the "*We Don't Patronize*" or "*Unfair*" list of defendants in furtherance of any boycott against complainant's business or product, and from referring, either in print or otherwise, to complainant, its business or product, as in said "*We Don't Patronize*" or "*Unfair*" list in furtherance of any such boycott.

The costs of this appeal are equally divided between appellant and appellee. Modified and affirmed.

The court which handed down this "modified and affirmed" decision is composed of three judges, each of whom delivered an opinion. One justice who concurred in the conclusion gave different reasons. It is difficult to read Justice Van Orsdel's concurring opinion and reconcile it with his conclusion to affirm the injunction even in modified form. Chief Justice Shepard dissented from the conclusion of the court.

The Court of Appeals did not take any original testimony in the case, and I am justified in saying that the judges were somewhat in error in their estimate of the actual facts in relation to the boycott of the Buck's Stove and Range Company. This is understandable from the fact that the American Federation of Labor at no time entered a detailed defense to the allegations of the Buck's Stove and Range Company, although the charges were untrue in many important particulars. On account of the fundamental issues of free press and free speech, which were involved in the original injunction, we preferred to stand upon the *unconstitutionality of the injunction* rather than obscure this great issue by going into the details of the original trouble with the Buck's Stove and Range Company.

It was generally expected that the Court of Appeals of the District of Columbia would hand down its decision early in October, 1909. Indeed, it was to meet the issue, whatever it might be, that I was careful to be within the jurisdiction of the court when the decision would be handed down. The decision was rendered Tuesday, November 2d—that is, on Election Day throughout the country. The court stood two to one in affirming Justice Wright's decision and sentences of one year, nine months, and six months' imprisonment for "Gompers, Mitchell, and Morrison," respectively, on the ground that they had violated the terms of Justice Gould's injunction. Chief Justice Shepard dissented from the decision and opinion of the court, and declared that Justice Wright's decision and sentences should be reversed, on the ground that he issued an order entirely beyond the power vested in him, and that the order was therefore void.

Concretely stated, the decision of the court declares that no matter whether the injunction of Justice Gould was right or wrong,

valid or void, we were compelled to obey. Against that concept, at least for myself, I enter a most emphatic protest. When a judge so far transcends his authority, and assumes functions entirely beyond his power and jurisdiction, when a judge will set himself up as the highest authority in the land, invading constitutionally guaranteed rights of citizens, when a judge will go so far in opinion, decision, and action, that even judges of the Court of Appeals have felt called upon to characterize his action "unwarranted" and "foolish," under such circumstances it is the duty of the citizen to refuse obedience and to take whatever consequences may ensue.

It is common knowledge that a judge has issued an injunction against municipal officers enjoining them from performing their duties in the enactment of laws. Assume that a judge will so far forget himself as to issue an injunction prohibiting a legislature, or Congress itself, from enacting laws. Will it be contended that obedience must follow? Let a judge issue an injunction enjoining the President of the United States from performing the duties of his office. Does it follow that the Chief Executive of our nation must yield obedience, and perhaps thereby fail to perform the duties of his great office, to the injury of the people of the country? Were the matter involved merely material, or of such a character that time would not destroy, the situation would be vastly different. All realize that for the orderly continuance and development of civilized society, obedience to the orders of the court is necessary, and to that there would be no dissenting voice.

I say advisedly that the whole people of our country are aroused to the seriousness of the situation. They realize that this attack upon free press and free speech among the workers is only the insidious beginning of the entire withdrawal of those rights from the whole people whenever it might suit the plans of those who desire to profit by injustice and tyranny. The response of the masses of the people to the campaign of the American Federation of Labor for the preservation of constitutional rights shows how thoroughly our labor movement is in harmony with the spirit of liberty and the love of justice and right which makes a nation great. The struggle is far from ended. Eternal vigilance ever was and always will be the price of the liberties of the people. Let no one doubt my great respect for the judiciary of our country; I have confidence in their integrity, no matter what their decision, still they are human beings and as such liable to err. I say this with

respect not only to the three justices of the District Court of Appeals, but with reference to the judiciary generally.

I repeat and emphasize this fact, that the doctrine that the citizen must yield obedience to every order of the court, notwithstanding that order transcends inherent, natural, human rights guaranteed by the constitution of our country, is vicious and repugnant to liberty and human freedom, and that it is the duty, the imperative duty, to protest. The history of the human race has been full of tyranny and the denial to the people of the right of expressing freely by speech or in the press their opinions. After our people established a government they recalled that they had omitted to safeguard this vital right in framing our constitution. Therefore, the first amendment to that instrument was that guaranteeing the right of freedom of speech and press. That means something. We do not need this right to please those entrusted with the authority of government. Free press and free speech were guaranteed that men might feel free to say things that *displeased*. Demand for reform coming from the people is generally distasteful to those entrenched in power and privilege.

We must have the right to freely speak and print for the wrongs that need resistance and cause that needs assistance. There is no persecution, no injustice, to a great movement but if met in the right spirit bears its harvest of good. In this case the tremendous popular indignation at the attempt to abolish the right of free press and free speech brings our union members into closer relations and more in sympathy with each other throughout the country, and, more than that, it brings to the attention of the people as a whole the noble aspirations and the splendid achievements of the labor movement in behalf of right, justice, and humanity. Out of this attempt to seal the lips of the men of labor I believe will come good. We have come too far in the march of human progress for any set of influences to drive us back into slavery.

I see a silver lining to the clouds and a bright star of hope in the heavens, and I see ultimately the spirit of humanity, justice, and the brotherhood of man obtaining in the minds and hearts of the people of the country. Like Jefferson, I am willing to trust the people, and I have a certainty of their final triumph.